DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

APPEALS

July 2, 2007

Control No. 08-0607-06
Impacted IRM: IRM 8.13.2

MEMORANDUM FOR DIRECTOR, FIELD OPERATIONS, EAST
DIRECTOR, FIELD OPERATIONS, WEST
DIRECTOR, APPEALS PROCESSING SERVICES
DIRECTOR, TECHNICAL GUIDANCE

FROM: Diane S. Ryan /s/Diane S. Ryan
Director, Technical Services

SUBJECT: Interim Guidance – Tax Increase Prevention and Reconciliation Act of 2005, Section 509

The purpose of this memorandum is to provide updated administrative guidance to Appeals employees on processing, payment application, and evaluation procedures for Offers in Compromise (OICs) under the Tax Increase Prevention and Reconciliation Act of 2005, Section 509. This guidance will be incorporated into the next revision of the Internal Revenue Manual and is <u>effective for one year from the date of this memorandum.</u>

A number of issues have surfaced since the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) became effective on July 16, 2006. Collection recently revised Form 656 and is updating IRM 5.8, Offer in Compromise, to reflect the significant changes brought about by TIPRA. The updated IRM is in the clearance process. Appeals will update IRM 8.23 (currently 8.13.2) once the new IRM 5.8 is published. Meanwhile, this interim guidance is needed to address some of the more significant TIPRA issues. Most TIPRA provisions affect the initial processing and preliminary evaluation of OICs with little impact on non-CDP offers in Appeals. The procedures attached to this memo are divided into separate guidance for CDP and non-CDP offers.

If you have any questions, please contact Chinchie Killfoil, Director, Tax Policy and Procedure, or a member of your staff may contact Dale Veer, OIC Program Analyst at 651-726-7430.

Attachment

cc: www.irs.gov

Attachment

Updated TIPRA Procedures for Appeals

Section 1: Background

The Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) was enacted May 17, 2006 and became effective on July 16, 2006. Amendments to the regulations under § 7122 have not yet been published. Until the regulations are updated, please refer to IRC § 7122 and Notice 2006-68 for the relevant TIPRA provisions pertaining to offers in compromise (OICs). Notice 2006-68 may be found on the Appeals website at:

http://appeals.web.irs.gov/cdp/oic/oic.htm

Offers mailed prior to July 16, 2006 are not affected by TIPRA. Amended offers for these cases may be secured using the July 2004 revision of Form 656 and taxpayers are not required to remit TIPRA payments with any subsequent amended offer.

IRS began using a Form 656-L, Offer in Compromise (Doubt as to Liability), in January of 2006. The new Form 656 (Rev. 02-2007) does not include doubt as to liability as an option because Notice 2006-68 provides that taxpayers submitting offers based only on doubt as to liability are not required to make TIPRA payments with the offers.

Section 2: General Changes Resulting from TIPRA

In response to TIPRA, the IRS changed the OIC types and payment terms to:

<u>Lump Sum Cash Offer</u>: 20% of the amount of the offer or a signed Form 656-A, Income Certification for Offer in Compromise Application Fee and Payment, must be sent with Form 656. Upon written acceptance of the offer, the balance must be paid in 5 or fewer installments.

<u>Short-term Periodic Payment Offer</u>: Offer amount is to be paid in more than 5 installments within 24 months from the date IRS received the offer. The first payment or a signed Form 656-A must accompany the Form 656. If the taxpayer does not submit a signed Form 656-A, the taxpayer must make installment payments during the offer investigation as they become due under the taxpayer's proposed payment schedule.
Note: If an amended offer is secured, the 24-month period begins the date the amended offer is received.

<u>Deferred Periodic Payment Offer</u>: Offer amount is to be paid in more than 5 installments over more than 24 months from the date the IRS received the offer but within the remaining life of the collection statute. The first payment or a signed Form 656-A must accompany the Form 656. If the taxpayer does not submit a signed Form 656-A, the taxpayer must make installment payments during the offer investigation as they become due under the taxpayer's proposed payment schedule.

The IRS now requires that installment agreements in effect prior to receipt of an OIC remain in effect while an offer is being considered <u>only</u> with regard to Lump Sum Cash offers. Installment agreement payments are not required for Periodic Payment offers because the taxpayer is required to make proposed installment payments pursuant to TIPRA while the offer is under consideration.

TIPRA does not require the taxpayer to make periodic payments on either a regular basis or in equal amounts, although the revised Form 656 is set up for the taxpayer to make such a proposal.

IRS changed the rules for determining the processability of post-TIPRA offers. Now, an offer will be deemed non-processable only if one or more of the following criteria are present:

a) Taxpayer in Bankruptcy: An offer will not be considered during a bankruptcy proceeding.

b) Taxpayer did not submit the application fee with the offer: An application fee of $150 or a signed Form 656-A must accompany the Form 656. The Form 656-A applies to individual taxpayers only. No application fee or Form 656-A is required if the sole basis of the offer is Doubt as to Liability.

c) Taxpayer did not submit the required initial payment or a signed Form 656-A with the offer: See the above for initial payment requirements. No initial payment or Form 656-A is required if the sole basis of the offer is Doubt as to Liability.

The IRS will no longer automatically return an offer as not processable if IMF and BMF taxpayers are not in filing compliance or if BMF taxpayers seeking to compromise employment tax debts are not compliant with FTDs prior to submitting the offer. An offer will be returned as not processable if the taxpayer does not come into filing compliance within the time the IRS provides after the offer is submitted. The new criteria are reflected on the revised processability letters available on APGolf.

Encourage taxpayers to send separate checks for the application fee and 20% down payment or initial periodic installment payment. The 20% down payment or initial periodic installment payment are not refunded if IRS determines the offer is not processable, but the application fee may be refunded. The following table reflects various application fee and initial payment scenarios:

	One person is liable	Two people are jointly liable	Two people are jointly liable but want to file separate offers	Two people have joint liabilities and one has additional separate liability	Corporation/ Partnership/LLC is proposing the offer
Number of Forms 656 needed	1	1	2	2	1
No. of Application Fees to be sent with Form 656	1	1	2	2	1
Lump Sum Cash Offer amount to be sent with Form 656	20% of the amount offered	20% of the amount offered	20% for each offered amount	20% for each offered amount	20% of the amount offered
Amount to be sent with the Short-term or Deferred Periodic Payment Offer	First periodic payment amount	First periodic payment amount	First periodic payment amount for each offer	First periodic payment amount for each offer	First periodic payment amount

Taxpayers filing a Doubt as to Liability offer or those meeting the low-income standard are not required to pay the $150 processing fee, down payment or periodic installment payments. The IRS OIC Monthly Low Income Guidelines found in the Form 656 (Rev. 02-2007) information booklet were increased to 250% of the most current Health & Human Services poverty guidelines.

Prior to the offer's acceptance, taxpayers are entitled to designate all payments required under TIPRA. The designation must be made in writing at the time the payment is made. Absent an express designation the payments will be applied in the best interest of the government. The taxpayer loses the right to designate offer payments after the offer is accepted. (See paragraph (a) in Section V of the 2/2007 Form 656).

If during the course of an offer investigation, a TIPRA payment(s), which includes the initial payment submitted with the offer and subsequent periodic installment payments, fully satisfies a tax debt for a period, the period must remain part of the offer and must be listed on any subsequent amended Form 656. Even though the tax debt is fully paid, the payment(s) used to satisfy the tax debt are still part of the overall offer amount, so the satisfied period(s) must remain part of the offer.

Similarly, if a taxpayer's total liability exceeded $50,000 and TIPRA payments made during the course of an OIC investigation cause the total to fall below $50,000 at the time the case is submitted for approval, the offer still requires an opinion from Counsel. If a non-TIPRA payment such as a refund offset is applied to the taxpayer's account, check to see if the non-TIPRA payment alone was sufficient to cause the total liability to fall below $50,000. If so, then no Counsel opinion is needed.

Section 3: TIPRA and non-CDP Offers

TIPRA has little effect on appealed offers received from Collection because:

- the down payment and processing issues have already been resolved by Collection;
- taxpayers are not required to continue making periodic TIPRA installment payments after the offer is rejected by Collection even if they appeal the rejection; and
- the 24-month period before the offer is statutorily accepted no longer applies because the offer was rejected by Collection.

While evaluating an offer, a settlement officer may decide that the proposed offer amount is too low or the payment terms too protracted to recommend acceptance. If Appeals secures an amended offer to reflect the acceptable terms, the taxpayer receives credit for partial payments already made with the original offer, but one or more additional payments may be required. The following table provides additional guidance (this table does not apply if the taxpayer qualifies for the low-income exemption or the offer is based on doubt as to liability):

If…	And…	Then
Original was a Lump Sum Cash offer	Amended offer is Lump Sum with greater proposed offer amount	Taxpayer must pay 20% of the revised amount minus the partial payment made with the original offer
Original was a Periodic Payment offer	Amended offer is Lump Sum	Taxpayer must pay 20% of the revised amount minus the sum of the periodic installment payments already paid toward the original offer
Original was a Periodic Payment offer	Amended offer is Periodic Payment with greater proposed offer amount and/or different proposed installment amounts or schedule	Taxpayer must make the initial proposed installment in accordance with the terms of the amended offer, and additional proposed periodic installments due during the evaluation of the amended offer
Original was a Lump Sum Cash Offer	Revised offer is Periodic Payment with greater proposed offer amount	Taxpayer must make the initial proposed installment in accordance with the terms of the amended offer, and additional proposed periodic installments due during the evaluation of the amended offer

Fewer months of future income are required for taxpayers agreeing to shorter payment terms.

The following table reflects the new requirements:

Payment Type	Payment Terms	Number of Months Future Income Required
Lump Sum Cash	Within 5 months	48
Lump Sum Cash	More than 5 months	60
Short Term Periodic Payment	Within 6 to 24 months	60
Deferred Periodic Payment	Within time remaining on the statute	Number of months remaining on the statute

Section 4: TIPRA and CDP Offers

An offer secured as a collection alternative in a CDP/EH case is significantly affected by TIPRA.

Processing

When an OIC is received as an alternative to collection in a CDP/EH case:

1. Date stamp the Form 656 and document its receipt on the case activity record. Under the new law, the offer will be deemed accepted if it's not rejected, returned or withdrawn within 24 months of the received date, so proper documentation of this date is critical.
2. Make sure the offer meets the processability requirements detailed above.
3. Forward the Form 656 and associated documents, payments and Letters 3820 and 3821 to the appropriate COIC site. Include any documentation concerning TIPRA payment designation. The processability letters and Form 3210 are available on APGolf.

Evaluation/Negotiation

If a taxpayer fails to make a proposed periodic installment for a Periodic Payment offer, IRC § 7122(c)(1)(B)(ii) allows IRS to consider the offer withdrawn. The taxpayer will be allowed one opportunity to make up the payment. Notify the taxpayer by telephone or correspondence, advise of the need to make the payment and allow 14 calendar days to do so. If contact is made by telephone, clearly document the case activity record as to what was discussed. If no contact is made by telephone, issue a letter.

a) If the taxpayer pays the missing amount within 17 calendar days after the date of the telephone contact or letter (this additional grace period allows for mail time and coincides with Collection's pending IRM 5.8 guidance), continue the offer investigation.

b) If the taxpayer fails to pay the missing amount within 17 calendar days after the date of the telephone contact or letter, the offer may be closed as withdrawn with the appropriate statement included in the Notice of Determination or Decision Letter.

Note: Taxpayers will be afforded an opportunity to make up only one missed periodic installment payment for a Periodic Payment offer, including amended offers, unless special circumstances exist.

Note: If the decision was previously made to reject the offer, then no contact is needed. Follow normal rejection procedures.

Appeals employees can process all pre-acceptance TIPRA payments using a Form 3244 <u>except</u> for the payment that's due with the Form 656. The processing fee and initial payment are part of the overall processability determination, so they must be forwarded to the appropriate COIC site. Subsequent pre-acceptance periodic monthly installment payments may be processed by Appeals. The following reflects the Designated Payment Codes (DPCs) associated with OIC payments:

- <u>DPC 33</u> - Offer in Compromise $150.00 application fee
- <u>DPC 34</u> - Offer in Compromise 20% lump sum or initial periodic payment
- <u>DPC 35</u> - Offer in Compromise subsequent payments made during the offer investigation.
- Apply payments designated to trust fund taxes per the written designation using <u>DPC 02</u>

New TIPRA issues are continually surfacing. If you encounter a TIPRA issue for which there doesn't seem to be any guidance or have any questions, please contact OIC Program Analyst Dale Veer at 651-726-7430.